

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**MARITIME COMMUNICATIONS/LAND MOBILE, LLC**  
**Debtor**

**CHAPTER 11**  
**CASE NO. 11-13463-JDW**

**SUPPLEMENTAL ANSWER AND RESPONSE OF DEBTOR  
TO EMERGENCY MOTION FOR WITHDRAWAL OF COUNSEL**

COMES NOW, Maritime Communications/Land Mobile, LLC (the “Debtor”), and files this its Supplemental Answer and Response to the Emergency Motion for Withdrawal of Counsel [DK #1161] (the “Motion”) filed herein by Copeland, Cook , Taylor & Bush, P.A. (“CCTB”) and in support thereof would respectfully show as follows, to-wit:

1. In order to advise the Court the actions of the group of creditors that are purportedly being represented by Warren Havens, the Debtor attaches, incorporates by reference and marks as **Exhibit “A”** its filings in a strikingly similar situation in a United States District Court antitrust case involving these same parties.

2. Other grounds to be assigned upon a hearing hereof.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully prays that upon a hearing hereof, this Honorable Court will enter its order granting the Motion to Withdraw, but with strict limitations and conditions with respect to replacement counsel, *pro se* limitations and related matters as more fully set forth in its original Answer and Response [DK #1168]. The Debtor prays for general relief.

DATED, this the 10 day of April, 2014.

Respectfully submitted,

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

By Its Attorneys

LAW OFFICES OF CRAIG M. GENO, PLLC

By:  \_\_\_\_\_

Craig M. Geno

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N:\Firm Data\Users\Bankrupt\Maritime Comm-Don DePriest\Pleadings\Supplemental Answer-Response - Leech M to Withdraw.wpd

**CERTIFICATE OF SERVICE**

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via electronic filing transmission and/or U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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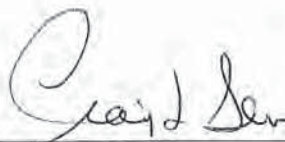
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THIS, the 12 day of April, 2014.

  
\_\_\_\_\_  
Craig M. Geno

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE:  
MARITIME COMMUNICATIONS/LAND MOBILE, LLC  
Debtor**

**CHAPTER 11  
CASE NO. 11-13463-JDW**

**EXHIBIT “A”**



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SKYBRIDGE SPECTRUM FOUNDATION, a Delaware nonprofit corporation; WARREN C. HAVENS, an individual; TELESARUS VPC, LLC, a Delaware Limited Liability Company; AMTS CONSORTIUM, LLC, a Delaware Limited Liability Company; INTELLIGENT TRANSPORTATION & MONITORING, LLC, a Delaware Limited Liability Company; and TELESARUS HOLDINGS GB, LLC, a Delaware Limited Liability Company,

Plaintiffs,

v.

MOBEX NETWORK SERVICES, LLC, a Delaware Limited Liability Company; MARITIME COMMUNICATIONS/LAND MOBILE, LLC, a Delaware Limited Liability Company; PAGING SYSTEMS, INC., a California corporation; TOUCH TEL CORPORATION, a California corporation, and DOES 1-100,

Defendants.

Civil Action No. 2:11-CV-00993-KSH-CLW

Motion Returnable:  
April 1, 2014

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DEFENDANT MARITIME COMMUNICATIONS/LAND MOBILE, LLC'S BRIEF IN  
OPPOSITION TO THE WINNEBAGO FIRM'S MOTION TO WITHDRAW FROM THE  
REPRESENTATION OF PLAINTIFFS IN THIS MATTER

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PRELIMINARY STATEMENT

Defendant Maritime Communications/Land Mobile, LLC ("MCLM") submits this brief in opposition to Plaintiffs Warren Havens, Skybridge Spectrum Foundation, Telesaurus VPC, LLC, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, and Telesaurus Holdings GB, LLC's (collectively, "Plaintiffs") counsels' ("Winne Banta") motion to withdraw.

Discovery in this action closed on March 14, 2013, the Proposed Pretrial Order (without exhibit lists) was filed August 23, 2013, and trial is scheduled for May 20, 21 and 22, 2014; but Winne Banta again seeks to withdraw from representing Plaintiffs in this action. Winne Banta's motion to withdraw on the eve of trial (after designating more than 6,000 trial exhibits) is prejudicial both to MCLM and this Court's interest in efficiently disposing of this action because MCLM expects that, if Winne Banta is permitted to withdraw, Plaintiffs will request additional time to retain new counsel. Indeed, MCLM's expectation is based upon Plaintiffs' exact course of conduct in the FCC Action and Bankruptcy Action, which have followed a virtually identical path – Plaintiffs stopped paying their counsel in order to delay those proceedings thereby impairing MCLM's ability to finally resolve those actions. Plaintiffs, who have had more than six months since the resolution of Winne Banta's last application to withdraw as counsel for Plaintiffs, have had ample time to retain and substitute in new counsel but have not done so. Plaintiffs' litigation tactic to delay the final resolution of this action should not be permitted.

As explained below, Winne Banta's application to withdraw appears, at least to MCLM, yet another stage in Plaintiffs' campaign to add complexity and delay to the resolution of this action (and the companion Bankruptcy and FCC Actions). Plaintiffs' history in those other actions has demonstrated (and MCLM predicted long ago in this action in its opposition to



the *pro hac* admission of Steve Zelinger) that Plaintiffs' would rely on their oft-used strategy to delay the resolution of the proceedings involving MCLM by forcing counsel to withdraw (typically for non-payment of fees) at critical times in the proceedings. Plaintiffs have hired and fired myriad counsel in the Bankruptcy and FCC Actions, including the retention (and, now, termination) of one of their expert witnesses in this action as Plaintiffs' counsel in the FCC Action (where Plaintiff Warren Havens is now appearing *pro se* but has not retained any counsel for his entities) – leaving behind a wake of delays that will only serve to stall the inevitable dismissal of Plaintiffs' meritless remaining cause of action.

Winne Banta's motion should be seen for what it really is – a calculated attempt by Plaintiffs (much like Plaintiffs' identification of more than 6,000 trial exhibits) to keep this specious action pending against MCLM for as long as possible to serve as leverage against MCLM in both the FCC and Bankruptcy Actions. Accordingly, and for the reasons set forth below, Winne Banta's motion to withdraw as counsel should be denied.

#### ARGUMENT

I. Winne Banta Has Failed To Demonstrate Good Cause To Withdraw And That Its Withdrawal Will Not Cause Prejudicial Delay

Local Civil Rule of Procedure 102.1 states that "[u]nless other counsel is substituted, no attorney may withdraw an appearance except by leave of Court. After a case has been first set for trial, substitution and withdrawal shall not be permitted except by leave of Court." Here, there is no proposed substitute counsel; nevertheless, where leave is sought and the movant satisfies each of the required elements (set forth, below), demonstrating "good cause," it is still within the discretion of the Court whether counsel should be allowed to withdraw. *Rusinow v. Kamara*, 920 F. Supp. 69, 71 (D.N.J. 1996) (stating that even if good cause had been shown, counsel would still not be permitted to withdraw given the impending



trial date); *see also Bogart v. Moda Entm't*, 2009 LEXIS 64969 (D.N.J. July 24, 2009). Of course, "the closer the parties get to the scheduled trial date, the less inclined the Court will be to entertain an application to withdraw and allow other counsel to be substituted." *Lite, New Jersey Federal Practice Rules*, comment 2 on L. Civ. R. 102.1 (citing *Brown v. Farleigh Dickenson Univ.*, 560 F. Supp. 391, 398-401 (D.N.J. 1983)).

Courts in this District have long recognized that:

In granting or denying a motion to withdraw, a court will consider factors such as: (1) [sic] the reasons why withdrawal is sought; (b) the prejudice withdrawal may cause to other litigants; (c) the harm withdrawal might cause to the administration of justice; and (d) the degree to which withdrawal will delay the resolution of the case.

*Rusinow*, 920 F. Supp. at 71. In addition to these factors (which Winne Banta completely fails to address), the Court must consider the New Jersey Rules of Professional Conduct ("RPC") 1.16, which guide the termination of the representation of a client (which Winne Banta also failed to address). *Id.* But RPC 1.16 makes clear that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." RPC 1.16(c). Winne Banta has already had its motion to withdraw denied once before.

The factual situation in *Rusinow* is substantially similar to this action. In *Rusinow*, ten months after entering the pretrial order and approximately two weeks before the scheduled trial date, Plaintiffs' counsel sought to withdraw because he received evidence that potentially demonstrated that his clients committed insurance fraud or perjury. 920 F. Supp. at 71. This Court denied Plaintiffs' counsel's motion, found that they did "not establish good cause to withdraw" and, even if they had established good cause, the "equitable factors would preclude this Court from granting their motion" – namely, that the attorneys had committed to represent their clients and withdrawal just prior to trial was not fair to the clients, the other parties or the



Court. *Id.* at 72. Specifically, this Court stated that once an attorney "agrees to undertake the representation of a client, *he or she is under an obligation to see the work through to completion.*" *Id.* (quoting *Haines v. Liggett Group, Inc.*, 814 F. Supp. 414, 423 (D.N.J. 1993)).

This Court further observed in its analysis that Plaintiffs' counsel had neither demonstrated that substitute counsel was available nor would timely prosecute the action and that they had represented Plaintiffs in the action "for almost two years [and were] uniquely aware of the facts, documents and legal issues relating to Plaintiffs' case." *Id.* And, "[t]o allow Plaintiffs' counsel to withdraw at this time would significantly interfere with this Court's scheduling of this action for trial and will certainly delay the resolution of this case." *Id.* Then, this Court identified its significant concerns regarding prejudice: "Their withdrawal not only would prejudice their clients' rights to representation, but would also interfere with the rights of the Defendants in this action, who have been waiting for the final resolution of this matter for [almost two years] since April 29, 1994, the date of the filing of the complaint." *Id.*

This Court cautioned the movants, "[a] sudden disenchantment with a client or a cause is no basis for withdrawal. Those who cannot live with risk, doubt and ingratitude should not be trial lawyers." These lessons are instructive here where Plaintiffs' counsel seeks to withdraw because their clients' ingratitude (and meritless Sherman Act claim) has apparently become disenchanting.

Winne Banta attempts to withdraw seven months after entry of the pretrial order and on the eve of trial, after almost six years of representation. While Winne Banta's motion is completely void of any discussion of the four factors set forth in *Rusinow* or the RPC factors, much less the relevant body of case law, it is clear that their withdrawal from this action could cause tremendous delay while Defendants continue to wait for final resolution of this matter



(which resolution will finally allow the Bankruptcy and FCC Actions to resolve as well). This inevitable delay would occur even if new counsel were ready to substitute, but no alternate counsel has been identified.

As to the *Rusinow* factors, Winne Banta seeks to withdraw for reasons less compelling than those in *Rusinow*, where no good cause was found. There, counsel believed that his continued representation would result in allowing his clients to commit fraud or perjury; here, Winne Banta only complains that their bills have not been paid and their clients "rant" and make "threats of malpractice claims," which are insufficient. *Amboy Bancorporation v. Jenkins & Gilchrist*, 2008 U.S. Dist. LEXIS 49070, \*4 (D.N.J. June 26, 2008) (finding that "the defendant corporation's inability to pay for the firm's legal services provides no basis for the firm to withdraw from the case"); *see also Haines*, 814 at F. Supp. 427-28 (holding that financial woes are insufficient to demonstrate good cause to withdraw). In *Rusinow*, as in the case at bar, Plaintiffs' counsel seeks to withdraw just before trial, after the parties have been waiting years for a resolution (here, four more years than in *Rusinow*). The prejudice that would result from further delay is tremendous – not only will MCLM be forced to continue to pay legal fees (in this action and the other actions) but the other actions will remain in limbo as well.

As to the third factor – the prejudice to the administration of justice – this case has burdened this Court's docket since 2008 and (if Plaintiffs' pattern and practices are any indication) Plaintiffs' delay and obfuscation tactics will persist. Plaintiffs' transparent attempt to delay the ultimate resolution of this action (keeping the specter of this lawsuit hanging over Maritime's efforts to complete the Bankruptcy Action and resolve the FCC Action) has manifested itself in, among other things, Plaintiffs' (1) serial attempts to amend their Complaint; (2) propounding of irrelevant written discovery; (3) issuance of hundreds of abusive subpoenas



to harass and interfere with virtually all of MCLM's business relationships; (4) refusal to timely schedule depositions; (5) submission of a 99-page statement of facts in opposition to MCLM's motion for summary judgment; (6) identification of more than 6,000 trial exhibits; and, most recently, (7) Plaintiffs' apparent refusal to comply with their supposed settlement agreement with co-defendant Paging Systems, Inc. Plaintiffs' next delay tactic is their abandonment of the Winne Banta firm (by non-payment of fees) without obtaining substitute counsel over the course of the last eight months while MCLM's motion for summary judgment was pending.

Plaintiffs' failure to pay counsel in order to delay proceedings is nothing new. For example, just this month in the Bankruptcy Action, Plaintiffs' counsel filed a motion to withdraw. (Mauriello Cert., Exh. A). Just this week, that motion was followed with a *pro se* motion by Plaintiff Havens for a continuance to seek replacement counsel. (Mauriello Cert., Exh. B). This Court will undoubtedly see the same *pro se* motion (likely more than one) should Winne Banta be allowed to abandon their clients. (*See, e.g.*, Mauriello Cert., Exh. C, demonstrating that Plaintiff Havens' will relentlessly file voluminous and irrelevant papers and applications to distract and delay this Court from resolving a simple issue – that there was no concerted action between MCLM and Paging Systems, Inc. that supports Plaintiffs single Sherman Act claim here). Indeed, Plaintiff Havens' prolific filings designed to distract and delay the resolution of the other proceedings have garnered sanctions in those proceedings. (*See, e.g., Id.*) ("In this Order, we adopt with certain modifications our proposal to sanction Warren C. Havens for making frivolous filings . . .").

And in the FCC action, Plaintiffs have been represented by no fewer than four firms in fewer than three years and attempted to proceed *pro se* for a significant and disruptive period of time. Starting in 2011, Nossman, LLP represented Plaintiffs, followed by:

- Nossman's withdrawal in or about May 2011 (just after the FCC hearing began);
- Drinker Biddle's appearance in or about June 2011;
- Drinker Biddle's withdrawal in or about January 2012;
- Robert Jackson, Esq.'s appearance for some of Plaintiffs in or about March 2012;
- Warren Havens' *pro se* representation of himself and remainder of Plaintiffs, despite the Administrative Law Judge's repeated orders to obtain counsel;
- Robert Jackson, Esq.'s withdrawal in or about September 2012; and
- James Chen, Esq.'s supposed limited appearance in or about November 2012.
- Havens' decision to proceed *pro se* on his own behalf, leaving his entities to be unrepresented.

This revolving door of counsel has delayed the FCC proceeding and, as stated above, a similar appearance-withdrawal pattern has recently emerged in the Bankruptcy Action.

As to the final *Rusinow* factor, in addition to the inevitable delay discussed above, the discovery (including Plaintiffs' proposed but improper 6000-plus trial exhibit list) likely would result in new counsel having to seek a substantial adjournment of the trial to review (much less master) the documents, depositions and history of this matter for Plaintiffs' case in chief. Winne Banta's withdrawal from representation of Plaintiffs at this time would unquestionably cause delay with trial on the horizon. Accordingly, MCLM respectfully requests that this Court deny Winne Banta's motion.



CONCLUSION

For the foregoing reasons, defendant MCLM respectfully requests that Winne Banta's motion to withdraw be denied to prevent further delay in this action.

GRAHAM CURTIN, P.A.  
Attorneys for Defendants  
Maritime Communications/Land Mobile, LLC

By: s/ Robert W. Mauriello, Jr.  
Robert W. Mauriello, Jr.

Dated: March 28, 2014



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March 28, 2014

**VIA ECF**The Honorable Cathy Waldor, U.S.M.J.  
United States District Court, District of New Jersey  
Frank R. Lautenberg U.S.P.O. & Courthouse Bldg.  
Newark, New Jersey 07101-9999**Re: Skybridge Spectrum Foundation, et al. v. Mobex Network Services, et al.  
Civil Action No. 2:11-cv-00993 (KSH) (CW)**

Dear Judge Waldor:

I received a call from Mr. Warren Havens yesterday during which he indicated that an individual from Your Honor's chambers told him to contact me to see if I would file his opposition to my pending motion to withdraw as counsel of record for the above-referenced action. While somewhat unorthodox, I recognize that Mr. Havens may not have any other avenue by which to file his opposition to my motion, so I agreed to file it, unaltered, as per his and the Court's request. The return date for the pending motion to be relieved as counsel is April 1, 2014.

Please accept the attached as representing plaintiffs' opposition to my motion to be relieved as counsel. I will not comment on the substance of the attached, but will state that I have not altered or otherwise changed the text or format and that neither I nor anyone at my firm had any input into the content of the attached opposition.

Respectfully submitted,

/s/ R. N. Tendai Richards  
R.N. Tendai Richards

Cc: Counsel of record (Via ECF)



Warren Havens  
Skybridge Spectrum Foundation, Verde Systems LLC, AMTS Consortium LLC,  
Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC \*

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March 28, 2014

*Via electronic filing by attorney Tendai Richards<sup>1</sup> / <sup>2</sup>*

Judge Waldor  
US District Court, Newark NJ

Re *Havens v. Mobex*, Case 2:08-cv-KHS-CLW (the "Case")  
*Emergency request. Decision requested by 10 am on March 31, 2014 for reasons explained below, with a copy emailed to me (contact information below).*

Dear Judge Waldor,

(i) Introduction

I did not have any attorney at Winne Banta or otherwise advise me on this letter. Winne Banta are not advising me as to matters addressed below. See also item 2 below.

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\* AMTS Consortium LLC is now called Environmental LLC, and Telesaurus VPC LLC is now called Verde Systems LLC. / I apologize for typos that may appear herein. I was struggling to get this done on a pro se (on my own) basis, and to find means to get this filed, and background documents from the Plaintiff Entities' office, and I have to file this now (end of the day) to be timely without final review for typo corrections and language improvement.

<sup>1</sup> I telephoned your Deputy yesterday to discuss my intention to submit this letter, asking about procedure. I did not discuss substance. He informed me that since I am still represented by counsel in this Case, that I should ask counsel to submit this letter, and that I am not in the circumstance *pro se*, since I am not without counsel (even as to being an individual plaintiff), and thus the oppositions noted in the text Order, document 212, as to the MTW applied to Defendants and not to me and Plaintiffs. He also noted that he cannot provide legal advice. I appreciate his courtesies.

<sup>2</sup> Since I could not obtain from Winne Banta timely and clear confirmation as to its commitment to filing of this electronically for me today, without qualifications, I will attempt to file this today by alternative means.

I submit this today which is the soonest I could get all the information in this letter and prepare and submit it. The orders of the end of last week, including as to the April 1 hearing, provided me little time up to now, for these tasks, and where I cannot give up in this period, and moving forward, my other legal and fiduciary obligations and deadlines as to the above listed entities I am President of, and several thousand FCC licenses I am responsible for.

By this letter, I submit (1) a request to continue the hearing set for April 1, 2014 (next Tuesday) and associated matters, (2) initial comments on the motion to withdraw as counsel submitted by the Winne Banta law firm representing Plaintiffs in this Case (the "MTW"), and (3) initial comments on the motion to compel by Defendants Paging Systems Inc. and TouchTel Corp. ("PSI-TT") ("MTC").

I am an individual Plaintiff in this Case, and am the President of each Plaintiff Entity, which are listed above (the "Entity Plaintiffs"). I am not an attorney.

I cannot act contrary to or independent of the Entity Plaintiffs in this case since I have fiduciary duties to them as their President and controlling interest holder.

I understand that I cannot practice law, or represent the Entity Plaintiffs in this Case.

I understand that I have a right to counsel, to represent me as an individual and the Plaintiff Entities, that does not have a conflict and is not acting adverse to the Plaintiffs' interests and purposes in this Case.

While I am looking for such an attorney or law firm to represent all Plaintiffs including myself, for this Case, I do not yet have that arranged.

For these reasons, *I do not believe I am able to address you or Judge Hayden as to the below matters*, either I in this letter or at any personal appearance.

Still, I believe that in the circumstance, I need to submit this, and ask that you at least consider and act on part '(1)' below (the request for continuance of the April 1 hearing), including for the efficiencies of this case for all parties and the court.

It appears to me that the Court may continue the hearing on its own motion, even if it cannot do so bases on this letter (given the constraints I note above).

1. The April 1 hearing: continuance requested



I request that this be continued and reset for one month or approximately that time for the following reasons.

(a) Plaintiffs have a right to respond to the Winne Banta MTW, but may do so only via counsel for reasons I note above. Winne Banta cannot advise Plaintiffs on this since Plaintiffs do not agree with either the factual assertions in the MTW or the results that are sought, among other reasons. See Section 2 below. A continuance for one month should provide time for Plaintiffs to obtain counsel to respond to the MTW. It would be unfair, and I believe improper, for the court to act on the MTW until the Plaintiff could lawfully and effectively respond to it with qualified counsel admitted to practice before this court.

(b) If the hearing is held on April 1, where I am ordered to attend in person, I cannot address the court for reasons noted above.<sup>3</sup> It would be a futile expenditure of time (3.5 days, and more on effective basis) and substantial cash expenditures,<sup>4</sup> and would in addition impose an unjustified hardship emergency prejudicing Plaintiffs in the Case.<sup>5</sup>

(c) The hearing cannot achieve its purpose as to anticipated trial testimony and exhibits since Winne Banta seek to withdraw, and are not committed to the case (see section 2 below, and for other reasons I could only submit via new counsel (see above) on a confidential, in-camera (I believe I am using the right term) basis. I cannot waive attorney client privilege or confidentiality. Winne Banta cannot effectively

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<sup>3</sup> In addition to the above, I am not on my own trained, informed and capable to discuss and decide on anticipated trial testimony and exhibits. I would need a lot of time, with support staff, for that function, and access to the Winne Banta files, etc.

<sup>4</sup> Travel from Oakland (I live nearby in Berkeley) California to Newark airport takes about 11-12 hours door to door, and several additional hours to prepare and settle in at a hotel. Same for return leg of the trip. It takes at least another 1.5 days work to arrange the travel, and put off other work demands, hand off to other persons to attempt that work, and try to patch up or revive work left off during the travel that only I can do for the Plaintiff Entity companies and FCC licenses I am the sole ultimate authority for (see page 1 at the top, above). It costs several thousand dollars in cash expenditures, but far more in loss of time and position/ opportunities, for these companies. Any travel like this (on highly short notice), is very costly in direct and indirect costs.

<sup>5</sup> See preceding footnote as to the Plaintiff Entities. It is also a personal hardship due to adverse impact on personal business and dependencies issues for like reasons.



undertake this purpose of the hearing, even if their MTW is denied. It would be unfair to Plaintiffs, in my view, in the circumstance.

*I realize this must be solved, and I am working on it. See Section 2 below. My efforts will be substantially diverted if I have to spend the time and money to attend the hearing on April 1.*

(d) Defendants PSI-TT asset in their MTC that they must be dismissed. For reasons noted in Section 3 below, I believe it is clear in FCC law, and in the Assignments Agreement part of the Settlement Agreement, that this court has no jurisdiction over the current dispute. The FCC has exclusive jurisdiction over the issues that are solely matters of FCC law and procedure, in dispute, and the California Court have exclusive jurisdiction over the dispute as to the reciprocal license assignments on a contract law basis (since that is what the Assignments Agreement specifically states). Still, the controlling person and representative of PSI-TT, Robert Cooper and I have discuss what appears to be a way to amend the Settlement Agreement, and then complete the settlement involving dismissal of PSI-TT in this case. But that, too, will take approximately a month. I cannot speak for Mr. Cooper here, but his counsel could obtain his comments on this. It appears to me premature, until this is worked or our attempts are fail, for PSI-TT to engage in further actions in this Case including in a hearing as to anticipated trial testimony and exhibits.

(e) Defendant Mobex is subject to a pending motion for default judgment. I am not aware of whether this is seeking a ministerial act that must be granted, if the motion is in good order, or if it may still be opposed by Mobex or in any case denied by the discretion of the court. If it is not a foregone conclusion that it will be granted, then it seems that the court act on this motion prior to a hearing for the parties to discuss and the court to decide on anticipated trial testimony and exhibits.

(f) Defendants Maritime Communications / Land Mobile LLC ("Maritime") is subject to a parallel FCC license- and licensee- disqualification hearing proceeding, earlier described to this court in this Case. See following footnote for summary background.<sup>6</sup> The FCC hearing will decide some of the core facts that are part

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<sup>6</sup> Under the full-Commission Hearing Designation and Order to Show Cause Order, FCC 11-64 (the "HDO"), in docket 11-71, commenced in year 2011. Maritime filed bankruptcy soon after this HDO was issued. Based on that, Maritime seeks extraordinary relief from the FCC as to this disqualification hearing, but the FCC has not, thus far, granted any such relief. Plaintiffs got the bankruptcy court to life the automatic stay so they could proceed with this Case. The court in this Case can, if it finds Maritime



of the facts alleged in the Complaint in this case, as to violation of FCC law. The Administrative Law Judge handling this case has a pending Order, FCC 14M-9 (Exhibit 1 below), that called for Maritime to submit additional facts and law as to the motion for summary decision (and/ or for a settlement, by content) that it submitted on December 2, 2013 which I have opposed. Maritime submitted its response to FCC 14M-9 this week, and my Opposition is due two weeks thereafter (for which there is much factual and legal argument work to be completed).

This FCC Judge has already reviewed the Maritime motion for summary decision, as reflected in FCC 14M-9, and apparently has substantially assessed it, since he noted deficiencies in (or in any case called for additional facts and law related to) the Maritime motion for summary decision. Also, the additional facts and law were of limited scope verses all of the facts and law in the motion. In addition, the FCC judge suspended (took off calendar) his scheduled actions and deadlines in this hearing, under his scheduling Order, when Maritime submitted this Dec 2, 2013 motion for summary decision. Exhibit 2 below is a copy of this scheduling Order. Since this FCC Judge appears to have assessed said Maritime motion, and Maritime has submitted its response noted above, and my opposition is due the week after next, it is likely that the Judge will conclude this hearing, one way or another, by a date not too far beyond the hearing date in this scheduling Order.

*The facts determined by the FCC Judge, just noted, will affect the instant court Case claims. If a trial proceeds in this Case prior to that FCC Judge's determinations, then Plaintiffs may need to bring a new court action as to their claims based on the new FCC determinations, if they are against Maritime and for Plaintiffs (the Plaintiffs in this court Case).<sup>7 8</sup> Those new factual determinations will be added to the*

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violated the Sherman Act, revoke the Maritime FCC licenses under 47 U.C.S. §313 directly (with not FCC involvement).

<sup>7</sup> In this regard, Maritime has already turned in and canceled before the FCC, in this FCC hearing, in the range on one half of its site-based AMTS licenses. I believe it could not do that, in the middle of its bankruptcy case, unless those assets were defective as claimed by Plaintiffs in this court Case. (Those licenses were, or mostly were, for "adjacent-channel" FCC frequencies as to the Plaintiff's AMTS licenses, but under FCC law and well established engineering, adjacent channel licenses affect the rights of the other adjacent channel licenses. That is the main purpose of the FCC: to define licenses by channels, and set power and other limits between them. The existence of any adjacent channel license, affects the other adjacent channel license. Our Complaint in this Case presents allegations that Mobex and Maritime (and other defendants) violated FCC rule §80.385(b) and associated FCC Orders (the so-called "cooperation" orders, but the actual



facts already determined or admitted in this court Case, since they are related, and together would support said new claims. While I am not an attorney, it appears to me that this situation would cause all of the parties, and the courts and judges involved, major inefficiencies, and possible conflicts in decisions, etc. Please see preceding two footnotes for more details.

If the above requested continuance of the April 1 hearing is granted, or issued by the court on its own motion, then by that time, the parties in this Case may either stipulate and submit to the court, or submit their respective positions, on the matters of this item 1(f): to what extent should the FCC hearing and facts to be determined this year (see above) in the hearing, affect the trial and pre-trial actions and schedule in this court Case.

*For all of the above reasons, I request the court consider and grant, upon this request or the courts own motion, a continuance of the length of time I suggest above.*

2. The Winne Banta Motion to Withdraw: initial comments

For reasons given above, I cannot as a non-attorney address the court on this matter, nor can I do so based on my fiduciary duties to the Plaintiff Entities (I need counsel to do that). In addition, see footnote on page 1 above regarding my discussion

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text defined rights and obligations under said rule), by not providing the technical parameters of the alleged-valid site-based AMTS licensed stations, without which we cannot determined the affects and limitations on our licenses. That applies to our same-channel licenses, but also our adjacent-channel licenses. This supports Plaintiffs' claims in this court Case under its Complaint.

<sup>8</sup> In addition to the preceding footnote: As a part of and a basis of the Maritime Dec 2, 2013 motion noted above, Maritime stipulated (with the FCC trial staff in this FCC hearing, the Enforcement Bureau) that it will give up the rest of its AMTS site-based licenses but for 16 (which it asserts is all but about 10 percent of the original total, and less than that of the original Mobex held prior to the FCC "audit" in year 2004, described in our Complaint in this Case (in which Mobex gave up many of its licenses, for lack of construction, and where it submitted false renewal applications to keep the defective licenses and block Plaintiffs in the market). This group of Maritime licenses, like the batch in the preceding footnote, cannot be given up by Maritime unless they are defective, under bankruptcy law and the bankruptcy orders involved, as far as I understand. And this group of licenses of Maritime are for the *same* frequencies as Plaintiff's AMTS licenses. This also supports Plaintiffs' claims in this court Case under its Complaint, but these matters are not final in the FCC hearing. *Once final, the factual findings involved will have a major impact on this court Case.*



with your Deputy. However, I am compelled to state the following on the record for reasons that are apparent in the following.

The Winne Banta allegations are *false*, have *not* been supported in their communications to me (or in Plaintiffs' records), are *damaging, prejudice* the Plaintiffs in this case, and may create a negative impression before your Honor and Judge Hayden.

Further, the Winne Banta motion to withdraw violates attorney client confidentiality. While the allegations are not true, they still violate this confidentiality (being untrue only compounds the breaches). This, in my layman view, undermines the premise in the motion including by the "unclean hands" doctrine. The motion alleges that the client acted improperly under professional standard and rules and contract requirements, but the motion itself clearly violates the foundation of legal practice and duties of attorneys to clients—to not disclose attorney client confidential communications and client confidential information, and to not hurt the subject legal claims and actions.

Further, the Motion falsely states or indicates that the court allowed Winne Banta to file a second motion to withdraw as the decision on the summary judgment motion. While the court's order denying the first motion to withdraw was without prejudice, it did not provide (and no other court order I am aware of provided) that a new motion could be filed at any particular time in the future, including after the decision on summary judgment.

In addition, Winne Banta did not give reasons that it waited to this time to file a new motion to withdraw, and then to get a hearing on is in extremely short time, with any response I may be allowed due in even shorter time, which is in affect on an emergency basis. I dispute the facts alleged by Winne Banta as indicated above, including as to matters between the attorney and clients since the time its first motion to withdraw was denied. That is made up, and misleads the court.

It is not my goals to undertake a "hearing within a hearing" on the contested facts and evidence indicated above as to this Winne Banta motion, but once I have qualified counsel to address the court on this matter, then Plaintiffs can submit their evidence on this matter. I assume that would be under a request for confidential, in-camera review.

Given the Winne Banta failures and breaches, in part indicated above (and to some degree reflected in publicly accessible information in this Case), and given the court's denial of the Maritime motion for summary decision and related schedule to and including the trial, the Plaintiffs have no choice but to now seek substitute counsel. I am

diligently working on that and asking some attorneys I know (that are not NJ attorneys and not themselves qualified candidates) to assist me, and they are providing assistance.

*If the above requested continuance is granted under my request or the court's own motion, then I will try to have new counsel engaged by the end of the continued period, even with the hurdles caused by the Winne Banta motion. If I am required to come to the April 1 hearing, that time and expense will substantially cut into this effort. (And as note above, I do not understand anything that I can say at that hearing.)*

Candidates will need to visit Winne Banta to review the extensive files. For now, I assume Winne Banta will cooperate and allow access to all of the files, including their communications with the clients. It is apparent that the Winne Banta allegations against the clients in their motion to withdraw imposes major hurdles in the clients efforts and cost to get new counsel. Candidates need to review not only the Case files, but the files Winne Banta has as to its dealings with the clients.

3. The PSI-TT Motion to Compel: initial comments

This is presented in Attachment A below.

Respectfully submitted,



Warren Havens  
An individual Plaintiff.  
And President of the Plaintiff Entities  
2509 Stuart Street, Berkeley CA 94705  
Phone 510 848 7797, or 510 841 2220  
Fax 510 740 3412  
[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net), with a copy to:  
[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)



Declaration

I declare that the above is true and correct under penalty of perjury and that the attached Exhibits are authentic copies.



Warren Havens  
March 28, 2018, Berkeley California.

Certificate of Service

If Winne Banta does not electronically file and service this, then I will seve copies by US mail or FedEx by the end of today, March 28, 2014, on the counsel to the other Parties, at their addresses of record shown in their most recent filings on PACER.



Warren Havens

Attachment A

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I (Warren Havens) communicated the substance of the below to Robert Cooper, the owner and head of TouchTel Corp, and the controlling person or acting representative of Paging Systems Inc. (his wife is listed as its owner, as I recall). This was sent by fax today. I previously presented this orally by telephone to Mr. Cooper.

Regarding the motion to compel ("MTC") submitted by Paging Systems Inc. and TouchTel ("PSI-TT"):

1. This NJ USDC lacks jurisdiction.

The courts with "exclusive jurisdiction" as stated in the Settlement Agreement, regarding disputes under the "Assignments Agreement" part of the Settlement Agreement, are the California Courts.

The PSI-TT MTC filing in the NJ Court is on an invalid and false basis, since it did not explain the FCC situation in part indicated below, and it was submitted to a court without jurisdiction based on the parties signed stipulation on that topic (the Assignments Agreement part of the Settlement Agreement noted above). That is another violation of the Settlement Agreement.

2. The FCC has sole jurisdiction as to pending matters under the Settlement Agreement that must be concluded under FCC final actions, and which have not been so concluded, and which bar the PSI-TT motion and makes its allegations false (and I believe, in violation of FRCP rule 11).

By the end of today, March 28, 2014, the due date, Plaintiffs will file with the FCC a petition challenging the PSI false report to the FCC of consummation, indicated below. I have already noticed the FCC on that by telephone with attorney David Hill, acting for PSI-TT, on that phone call.

The MTC is largely based on the FCC licenses assignments, which conclude only with all assignors involved closing the assignments under the contract, the Settlement Agreement, and then filing notices of consummation (reporting said actual Closings) to the FCC, for the FCC to issue the assigned licenses. However, these assignments are not completed before the FCC, due to PSI violations of FCC law involved (apart from violations of the Settlement Agreement under state law). Completion of the license assignments under FCC law is required step under the Settlement Agreement that must be completed prior to dismissal of the NJ court claims



against PSI-TT.

The FCC notice of consummation filed by PSI is invalid, and objectionable, and violates fundamental FCC law, including as follows. Plaintiffs involved in the assignments (Verde Systems Inc., and Skybrige Spectrum Foundation) did not sign the assignment documents in the Settlement Agreement, and thus the assignment transaction did not close.

Also, the Settlement Agreement was the sole basis of PSI-TT's claim under FCC rule 1.935 as to why it, and my side, can withdraw our pending pleadings. This was also a required step under the Settlement Agreement that must be completed prior to dismissal of the NJ court claims against PSI-TT. Plaintiffs withdraw those on our side, solely since PSI-TT told the FCC that the consideration under the settlement agreement, a copy of which was given to the FCC for purposes of rule 1.935 requests, was the basis of the FCC granting the withdrawal requests. However, PSI did not follow the settlement agreement, but violated it, by filing the notice that the assignments to it has closed- and were consummated, and thus the PSI-TT submission to the FCC to get my side (and its side) to withdraw the pending pleadings, was false, and the FCC grant of those request was on a false basis, and should be reversed. The consummation should be reversed for those and other reasons. PSI-TT had no court order that found that the assignments to it were validly closed or deemed to be closed and that PSI-TT had the legal right to submit the notice of consummation to the FCC before even getting any such court order. The PSI notice of consummation, by which it took and now hold the subject Verde and Skybrige licenses, is a serious violation of FCC law, and also violates the Settlement Agreement.

Until this matter is cured and resolved before the FCC under FCC law and procedures, PSI-TT have no right to require Plaintiffs to dismiss the NJ court action as to them, under the Settlement Agreement based on the actual terms of that Settlement Agreement.

Also, PSI-TT has not issued to Plaintiffs side, Notices under the Settlement Agreement as to its actions and positions including those that are the basis of the MTW. In this regard, we only received in piecemeal from Mr. Cooper of PSI-TT, on phone calls, bits and pieces of the PSI-TT position, but those are not valid Notice communications under the Settlement Agreement, nor is any letter from the PSI-TT attorneys in the NJ court Case to Plaintiffs' attorneys, Winne Banta (that is not a Notice under the Settlement Agreement, and the PSI-TT side also knows that our side's NJ attorneys are not acting as normal representative counsel to our side (they want to withdraw, etc.). The Settlement Agreement was not made with attorneys, but made by and with the Parties, and Notices

go to the parties as specified therein. PSI-TT failed to do this including as to the matters asserted in the MTW.

For the above reasons, the MTW is defective including since the NJ USDC has no jurisdiction, but the FCC has jurisdiction on the above noted disputes under actions under the Settlement Agreement before the FCC under FCC rules and procedures that must be completed prior to Plaintiffs dismissal of PSI-TT in the court Case, and if PSI-TT believed Plaintiffs violated any part of the Assignments Agreement part of the Settlement Agreement, it must apply for relief to the courts with exclusive jurisdiction stated therein, which is not the USDC in NJ. Courts must respect parties stipulations on jurisdiction under well established law, as I understand such law.

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**EXHIBIT 1**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**FCC 13M-19**  
09789

In the Matter of	)	EB Docket No. 11-71
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	File No. EB-09-IH-1751
<b>MOBILE, LLC</b>	)	FRN: 0013587779
	)	
Participant in Auction No. 61 and Licensee of	)	
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004310060, 0004314903,
<b>INC.; DUQUESNE LIGHT COMPANY, DCP</b>	)	0004315013, 0004430505,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004417199, 0004419431,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004422320, 0004422329,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	0004507921, 0004153701,
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	0004526264, and 0004604962
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE-MID CONTINENT, LLC;</b>	)	
<b>AND SOUTHERN; CALIFORNIA REGIONAL</b>	)	
<b>RAIL AUTHORITY</b>	)	
	)	
For Commission Consent to the Assignment of	)	
Various Authorizations in the Wireless Radio	)	
Service	)	

**ORDER**

**Issued: October 25, 2013**

**Released: October 25, 2013**

*Order*, FCC 13M-18, released by the Presiding Judge on September 20, 2013, adopted a schedule of procedural dates for this case in preparation for a formal hearing. On October 18, 2013, Mr. Havens submitted a Motion to Amend Schedule Due to Government Shutdown and Other Good Cause ("Motion"), which requests that the deadline for substantive motions previously set in the *Order* for October 31, 2013, be delayed for 30 days. Mr. Havens further requests that the remaining deadlines no longer be set as dates certain, but be replaced by



specified time intervals, to be calculated from the date of the Presiding Judge's ruling on the parties' substantive motions.

Mr. Havens' Motion states that the recent lapse in federal appropriations for 16 days ("shutdown") temporarily suspended public access to the Agency's online databases, the Electronic Document Filing System and the Universal Licensing System. Mr. Havens' Motion states that this suspension of service prevented him or his prospective attorneys from accessing docket pleadings and orders in this case. The Motion also states that the shutdown has delayed his work on a number of separate matters involving the Commission which are also subject to pending deadlines. On October 21, 2013, the Enforcement Bureau ("Bureau") and Maritime Communications/Land Mobile, LLC ("Maritime") submitted their Joint Response to Motion to Amend Schedule. The response states that during the shutdown, Bureau staff were unavailable to continue their ongoing negotiations with the other parties concerning a possible resolution of Issue G. Thus, the Bureau and Maritime support Mr. Havens' Motion to Amend the Schedule.

It is reasonable to adjust the schedule by 30 days as requested by each of the parties. The shutdown should not be permitted to cause any undue burden on the parties. However, the shutdown and its effects on the parties do not necessitate further adjustments to the schedule to remove dates certain for the procedural deadlines that fall after the Presiding Judge's ruling on substantive motions. Maintaining specified dates in the schedule will provide all of the parties and the Presiding Judge with certainty and help ensure that the parties remain focused on necessary tasks, so that this proceeding continues to move forward. If a specific need arises for a reasonable delay in the schedule, the Presiding Judge will consider requests by the parties to toll deadlines. In any event, the Presiding Judge intends to rule swiftly on any substantive motions once responses are received and considered, so no further delays should be anticipated at this time unless ordered by the Presiding Judge or by the Commission.

### *Rulings*

Accordingly, IT IS ORDERED that the schedule previously adopted by *Order*, FCC 13M-18, BE AMENDED setting all procedural dates approximately thirty days later than previously scheduled, as specifically reflected below.

### **Procedural Dates**

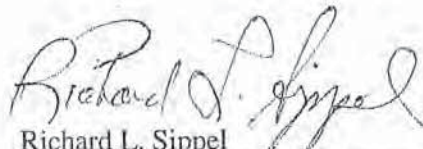
<b>December 2, 2013</b>	Substantive Motions regarding matters relating to Issue G
<b>December 16, 2013</b>	Response to Substantive Motions matters that are filed on December 2
<b>February 7, 2014</b>	Direct Case document exhibits, deposition designations and written direct testimony to be exchanged by 12:00 noon. <sup>1</sup>

<sup>1</sup> Hearing exhibits must be received by all parties and the Presiding Judge not later than this date. Exhibits are to be serially numbered and assembled in binders. The name of the party introducing the exhibits must be shown on each exhibit (e.g., Maritime Exh. 1 ). All pages within each exhibit must be consecutively numbered and internal numbering by hand is accepted. Tabbed dividers indicating exhibit numbers shall be used. If Official Notice of



<b>February 21, 2014</b>	Witness Notification for Cross Examination – exchange of witness lists
<b>March 7, 2014</b>	Objections to Witnesses for Cross Examination – exchange of witness lists
<b>March 25, 2014</b>	Objections filed to Direct Case exhibits and/or testimony <sup>2</sup>
<b>March 28, 2014</b>	Response filed to Objections to Direct Case exhibits and/or testimony
<b>April 1, 2014</b>	Evidence Admission Session - Presiding Judge to Rule on any unresolved Exhibit Objections <sup>3</sup>
<b>April 24, 2014</b>	Trial Briefs of EB, Maritime, Havens to be exchanged
<b>May 13, 2014</b>	Hearing Commences at 10:00 a.m. <sup>4</sup> Thereafter, hearing days begin at 9:30 a.m. unless ordered otherwise <sup>5</sup>

FEDERAL COMMUNICATIONS COMMISSION<sup>6</sup>

  
 Richard L. Sippel  
 Chief Administrative Law Judge

documents is expected to be requested, each document must be separately assembled, identified by source, given an exhibit number (e.g., Notice Exh. \_\_\_\_\_) and exchanged on the date set. Index with descriptive title of each footnote exhibit, number of pages in each exhibit, and identification of any sponsoring witness(es) for each exhibit shall be included.

<sup>2</sup> Written direct testimony must be received by all parties and the Presiding Judge not later than this date and must adhere to the guidelines for the treatment of hearing exhibits prescribed in footnote 1, *supra*. The numbering of the written direct testimony must sequentially follow that of the document exhibits.

<sup>3</sup> If objections cannot be resolved at the Evidence Admission Session (*i.e.* need arises for live authentication testimony), they will be resolved on the first day of hearing in which case authentication witnesses must be in the courtroom or in the adjoining witness room.

<sup>4</sup> Each party has the option to conduct brief direct examination of its witnesses for introduction, to address or clarify any fact issue raised for the first time in an opposing party's written direct testimony, and to briefly summarize the witness's written direct testimony before the witness is proffered for cross-examination.

<sup>5</sup> Witnesses can expect one 15 minute break in the a.m. and one in the p.m. Except where witness cross-examination can be completed by a reasonable later time, the hearing day ends at 5:00 p.m.

<sup>6</sup> Courtesy copies of this *Order* are e-mailed on issuance to each counsel.



Exhibit K

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Case 2:11-cv-00993-KSH-CLW Document 215-1 Filed 03/28/14 Page 17 of 19 PageID: 5996

**EXHIBIT 2**

REDACTED VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC 14M-9

In the Matter of	)	EB Docket No. 11-71
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	File No. EB-09-IH-1751
<b>MOBILE, LLC</b>	)	FRN: 0013587779
	)	
Participant in Auction No. 61 and Licensee of	)	
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004310060, 0004314903,
<b>INC.; DUQUESNE LIGHT COMPANY, DCP</b>	)	0004315013, 0004430505,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004417199, 0004419431,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004422320, 0004422329,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	0004507921, 0004153701,
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	0004526264, and 0004604962
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE-MID CONTINENT, LLC;</b>	)	
<b>AND SOUTHERN; CALIFORNIA REGIONAL</b>	)	
<b>RAIL AUTHORITY</b>	)	
	)	
For Commission Consent to the Assignment of	)	
Various Authorizations in the Wireless Radio	)	
Service	)	

**ORDER**

**Issued: March 12, 2014**

**Released: March 12, 2014**

The Joint Motion of Enforcement Bureau and Maritime [Communications/Land Mobile, LLC] for Summary Decision on Issue G ("Motion") is under consideration by the Presiding Judge. It is requested that Maritime and the Enforcement Bureau submit additional information or explanation, with evidentiary support as appropriate.

Maritime should provide further facts regarding the operational status of its facilities licensed as call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown),



## REDACTED VERSION

WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), and WHG750. The Motion does not sufficiently describe the operational status of the authorized facilities, but describes only the operational status of [REDACTED]<sup>1</sup> and fill-in sites constructed by Duquesne Light Company that operate within the contours of those licenses.<sup>2</sup>

Maritime should provide further facts regarding its plans for future operation of its facilities licensed as call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, KAE889-4 (Rainier Hill), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain). The Motion does not adequately describe the future operating plans of the authorized facilities, but only describes the current and future plans for use of related spectrum by [REDACTED] fill-in sites constructed by Duquesne Light Company, and fill-in sites being constructed by Puget Sound Energy, Inc.<sup>3</sup>

Maritime should provide further facts regarding the operational status and plans for future operations of its facility licensed as call sign KAE889-13 (Portland).

The Motion appears to tacitly assume that (1) the operation of a facility has not permanently discontinued if it is demonstrated that the spectrum authorized for use by its site-based license has been leased to, and is in use by, a third party; and (2) the operation of a facility has not permanently discontinued if its operation is restricted by the operations of other facilities. Maritime and the Enforcement Bureau should provide further explanation and authority in support of their positions, or state their positions more clearly. Maritime and the Enforcement Bureau should also submit their views on what obligations exist for a licensee to continue operating a licensed facility after the related spectrum is leased to a third party.

Maritime and the Enforcement Bureau shall file the above-requested information, jointly if possible, before 5:30 pm EDT on March 26, 2014. Responses by other parties shall be limited to the content of Maritime and the Enforcement Bureau's filings and shall be filed before 5:30 pm EDT on April 9, 2014.

**SO ORDERED.**

FEDERAL COMMUNICATIONS COMMISSION<sup>4</sup>



Richard L. Sippel  
Chief Administrative Law Judge

<sup>1</sup> Motion at 13-15 ¶¶ 23-26.

<sup>2</sup> *Id.* at 16-17 ¶ 28.

<sup>3</sup> *Id.* at 18 ¶ 32.

<sup>4</sup> Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.